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No. 95-1639

# In the Supreme Court of the United States

OCTOBER TERM, 1995

RAY CHARLES FIELDS, ET AL., PETITIONERS

*v.*

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT*

## BRIEF FOR THE UNITED STATES

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9 pp

## QUESTIONS PRESENTED

1. Whether the prosecutor exercised a peremptory challenge against a potential juror on the basis of race.

2. Whether the Double Jeopardy Clause bars petitioners' criminal prosecution on drug trafficking and related charges because the government had civilly forfeited the proceeds of petitioners' drug trafficking activity in a prior proceeding.

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## BRIEF FOR THE UNITED STATES

### OPINION BELOW

The opinion of the court of appeals (Pet. App. A1-A31) is reported at 72 F.3d 1200.

### JURISDICTION

The judgment of the court of appeals was entered on January 9, 1996. The petition for a writ of certiorari was filed on April 8, 1996. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

### STATEMENT

Following a jury trial in the United States District Court for the Northern District of Texas, petitioners (Ray Fields, Timothy Fields, and Darron Fields) were convicted of conspiracy to traffic in cocaine, in violation of 21 U.S.C. 846. In addition, Ray Fields and

Timothy Fields were convicted on multiple substantive drug offenses, in violation of 21 U.S.C. 841(a)(1); and money laundering, in violation of 18 U.S.C. 1956(a)(1)(A)(i). Ray Fields was also convicted of engaging in a continuing criminal enterprise, in violation of 21 U.S.C. 848(a); multiple counts of using a communication facility in connection with controlled substance offenses, in violation of 21 U.S.C. 843(b); and possession of a firearm while a felon, in violation of 18 U.S.C. 922(g)(1). Timothy Fields was also convicted of using and carrying a firearm during and in relation to a drug trafficking crime, in violation of 18 U.S.C. 924(c)(1). Ray Fields and Timothy Fields were sentenced to life imprisonment. Darron Fields was sentenced to 360 months' imprisonment. Gov't C.A. Br. 3-4. The court of appeals vacated Ray Fields' conspiracy conviction, but otherwise affirmed. Pet. App. A1-A31.

1. Ray Fields headed a crack cocaine drug trafficking organization. His brothers, Timothy Fields and Darron Fields, helped him run the operation. Together they purchased powder cocaine, converted it into crack cocaine, distributed it to salespersons, and picked up the money from the salespersons. Before it was broken up by law enforcement, the organization distributed more than 1,000 kilograms of crack cocaine. Pet. App. A2-A3.

Before trial, the government civilly forfeited approximately $500,000 in money and property that belonged to petitioners Ray and Timothy Fields. At trial, Ray and Timothy Fields moved to dismiss the indictment on the ground that the prior civil forfeiture constituted punishment for the same offense. At a hearing on that motion, the district court found that the forfeited money and property represented the

proceeds from drug trafficking activity. The court then denied the motion. Pet. App. A10; Gov't C.A. Br. 55-59.

At trial, the prosecutor exercised four peremptory challenges against minority venirepersons; three against blacks, and the fourth against an hispanic. Petitioners claimed that the challenge against Debbie Young, a black female, was based on race. The prosecutor denied the allegation, explaining that he struck Young because of her age (she was about the same age as the defendants), because she repeatedly glanced at petitioners in a flirtatious manner, and because she avoided eye contact with the prosecutor. The prosecutor also noted that three blacks remained on the jury. After defense argument, the court denied the motion. Pet. App. A3; Gov't C.A. Br. 49-51.

2. The court of appeals vacated Ray Fields' conspiracy conviction, but otherwise affirmed. Pet. App. A31. The court ruled that the prosecutor did not remove Young from the jury on the basis of her race. The court concluded that the prosecutor's reasons for striking the juror—the juror's age, her flirtatious glances at petitioners, and her avoidance of eye contact with the prosecutor—were race-neutral. *Id.* at A3-A5.

The court of appeals also held that the prior civil forfeitures of $500,000 worth of assets from Ray and Timothy Fields did not constitute punishment under the Double Jeopardy Clause. The court ruled that the district court's finding that the forfeited assets constituted drug proceeds was not clearly erroneous. Based on circuit precedent, see *United States* v. *Tilley*, 18 F.3d 295 (5th Cir.), cert. denied, 115 S. Ct. 573, 574 (1994), the court concluded that the civil

forfeiture of drug proceeds under 21 U.S.C. 881(a)(6) was not punishment. Pet. App. A10-A12.

## DISCUSSION

1. Petitioners contend (Pet. 4-9) that the courts below erred in finding that the prosecutor offered a race-neutral nonpretextual explanation to justify his exercise of a peremptory challenge to remove Young from the jury panel. That factbound claim does not merit further review.

This Court held in *Batson* v. *Kentucky*, 476 U.S. 79 (1986), that the Equal Protection Clause bars a prosecutor from exercising peremptory challenges based on race. This Court formulated a three-step inquiry to govern claims of racial discrimination in the exercise of a peremptory challenge: (1) the defendant must make a *prima facie* showing that the prosecutor's peremptory challenge was based on race (476 U.S. at 96-97); (2) if the defendant makes that showing, the burden shifts to the prosecutor to provide a race-neutral reason for the challenge (*id.* at 97-98); and (3) the trial court "then [has] the duty to determine if the defendant has established purposeful discrimination" (*id.* at 98). The trial court's determination is entitled to great deference by the reviewing court, *id.* at 98 n.21, and may be reversed only if it is clearly erroneous. *Hernandez* v. *New York*, 500 U.S. 352, 369 (1991) (plurality opinion). See also *Purkett* v. *Elem*, 115 S. Ct. 1769, 1770-1771 (1995) (per curiam) (describing *Batson* test).

*Batson* requires only that a peremptory strike not be based on race; "the reason offered by the prosecutor for a peremptory strike need not rise to the level of a challenge for cause." *Hernandez*, 500 U.S. at 362-363 (plurality opinion). See also *Purkett*, 115 S.

Ct. at 1771 ("[A] 'legitimate reason' is not a reason that makes sense, but a reason that does not deny equal protection."). "Unless a discriminatory intent is inherent in the prosecutor's explanation, the reason offered will be deemed race neutral." *Hernandez*, 500 U.S. at 360 (plurality opinion).

Here, the prosecutor stated that he removed Young because she was young, she avoided eye contact with the prosecutor, and she repeatedly glanced flirtatiously at petitioners. Those reasons were race-neutral, clear, and specific, as *Batson* requires. Although the prosecutor relied on intuitive assumptions in striking Young, *Batson* does not prohibit that kind of subjective judgment on the part of prosecutors. See, *e.g.*, *Troupe* v. *Groose*, 72 F.3d 75, 76 (8th Cir. 1995); *Burks* v. *Borg*, 27 F.3d 1424, 1429 (9th Cir. 1994), cert. denied, 115 S. Ct. 762, 1122 (1995); *United States* v. *Scott*, 26 F.3d 1458, 1466 (8th Cir.), cert. denied, 115 S. Ct. 584 (1994); *United States* v. *Bentley-Smith*, 2 F.3d 1368, 1374 & n.6 (5th Cir. 1993). The prosecutor's explanation need only be genuine, not reasonable. See *Purkett*, 115 S. Ct. at 1771-1772. The conclusion of both courts below that the prosecutor did not strike Young for racial reasons was not clearly erroneous and warrants no further review.

2. Petitioners Ray and Timothy Fields renew (Pet. 9-11) their claim that the instant prosecution violated the Double Jeopardy Clause because the government's prior civil forfeiture of their drug proceeds constituted punishment for the same offense. The issue raised by petitioners is currently before this Court in *United States* v. *$405,089.23*, No. 95-346 (argued Apr. 17, 1996). Accordingly, the petition should be held as to that issue pending this Court's

decision in *$405,089.23*, and then disposed of accordingly.

## CONCLUSION

As to petitioners' second question presented, the petition for a writ of certiorari should be held pending this Court's decision in *$405,089.23*, and then disposed of in light of that decision. In all other respects, the petition should be denied.

Respectfully submitted.

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